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June 15, 2021

Via ECF

Honorable Mary Kay Vyskocil
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 18C
New York, New York 10007

Re: *A.G., individually and on behalf of N.M., a child with a disability v. N.Y.C. Dep't of Educ.*, 21-CV-2137 (MKV)

Dear Judge Vyskocil:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel, attorney for Defendant, the New York City Department of Education ("DOE"), in the above-referenced action. I write jointly with Plaintiffs' counsel Britton Bouchard, Esq., in anticipation of the Initial Pretrial Conference in this matter, currently scheduled for June 22, 2021, and in compliance with the Court's June 4, 2021 Notice of Initial Pretrial Conference (ECF Dkt. No. 9) and the Court's Individual Rules of Practice.

The parties write to respectfully request an adjournment of the Initial Pretrial Conference and either (a) a conversion of that conference to a settlement conference, as discussed in further detail below or (b) a brief adjournment of that conference due to a pre-existing conflict in my schedule. This is the parties' first request to adjourn the Initial Pretrial Conference.

Nature of the Case

Plaintiffs commenced this action under the Individuals with Disabilities in Education Act, 20 U.S.C. § 1400 *et seq.*, seeking implementation of a Findings of Fact and Decision entered in the underlying administrative action, in addition to seeking attorneys' fees, costs, and expenses related to legal work on that administrative hearing and in this federal action. The parties have resolved all implementation issues in this matter; the only remaining claim relates to Plaintiffs' claim for attorneys' fees, costs, and expenses.

Jurisdiction and Venue

Plaintiffs assert that jurisdiction is predicated upon 28 U.S.C. § 1331, which provides the district courts with original jurisdiction over all civil actions arising under the laws of the United States, and upon the fee-shifting provision of IDEA, 20 U.S.C. § 1415(i)(3)(A), which provides that the district courts of the United States shall have jurisdiction of actions brought under section 1415(i)(3) without regard to the amount in controversy. Plaintiffs predicate venue upon 28 U.S.C. § 1391(b)(1), based upon the residence of Defendant, and upon 28 U.S.C. § 1391(b)(2) based upon the location of the subject matter of this action.

Procedural Posture

There are presently no pending motions in this matter. Moreover, given the nature of this action, neither party contemplates the need for traditional discovery. Accordingly, the parties do not believe that a case management plan is appropriate for this matter and, respectfully, do not attach one here. Rather, the parties respectfully propose the following plan for moving this case towards resolution.

As stated *supra*, the parties were able to resolve Plaintiffs' claim related to implementation of the Findings of Fact and Decision in the underlying administrative action. Following resolution of that issue, Plaintiffs' counsel provided Defendant's counsel with a copy of the billing records and timesheets for the underlying administrative matter and this action. Defendant reviewed these records and made an initial settlement offer. Thereafter, the parties engaged in settlement negotiations.

The parties have not, however, been able to resolve the remaining claim. The parties respectfully submit that they believe a settlement conference would be the best means of moving this matter forward and, therefore, respectfully request that the Court adjourn the initial pretrial conference, presently scheduled for June 22, 2021, and instead schedule a settlement conference in the coming weeks. Should the Court grant this request, the parties can be available for a settlement conference on June 30, 2021 or between July 6, 2021 and July 9, 2021.

In the event that the parties are unable to reach an agreement during the proposed settlement conference, Plaintiffs intend to file a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure and would request that the Court set a full briefing schedule at the conclusion of the settlement conference.

In the event that the Court wishes to proceed with the Initial Pretrial Conference, Defendant respectfully requests a brief adjournment. Defendant makes this request as I have a pre-existing conference in another matter scheduled on June 22 that will likely conflict with the 11 a.m. conference in this action. In order to avoid the possible conflict, I respectfully request a brief adjournment should the Court wish to move forward with the Initial Pretrial Conference. I have conferred with Mr. Bouchard, and the parties can be available at the following dates and times: all day on June 23; before 11 a.m. or after 1 p.m. on June 24; or all day on June 30.

Thank you for your consideration of these requests.

Respectfully submitted,

/s/

Rosemary C. Yogiaveetil
Assistant Corporation Counsel

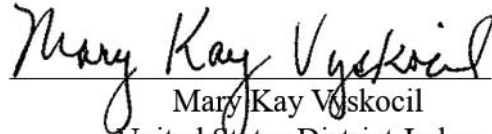
cc: **Via ECF**

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Attorney for Plaintiffs

GRANTED. The Initial Pretrial Conference scheduled for June 22, 2021, is adjourned *sine die*. The Court will enter an Order of Reference to a Magistrate Judge for settlement purposes. Within five business days of the settlement conference, the parties shall file a joint letter advising the Court of the status (not substance) of settlement negotiations, *i.e.*, whether the settlement conference was successful or unsuccessful and if unsuccessful, whether settlement discussions are ongoing or have broken down. If the parties are unable to reach a settlement, the parties shall include a proposed briefing schedule in their joint letter.

SO ORDERED.

Date: 6/15/2021
New York, New York


Mary Kay Vyskocil
United States District Judge